THE HONOURABLE SRI JUSTICE T.CH. SURYA RAO

AND

THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

W.P. No.4343 of 2006

ORDER: (Per Hon'ble Sri Justice T.CH. Surya Rao)

The instant writ petition is directed against the order dated 27-09-2005 passed by the learned Special Court in I.A. No.908 of 2004 in L.G.C. No.155 of 1999. The writ petitioners are the respondents in L.G.C. No.155 of 1999 and in I.A No. 908 of 2004 as well. The 1st respondent herein is the applicant and the 2nd respondent herein is the respondent No.23 in the said interlocutory application. The 1st respondent filed I.A. No.908 of 2004 in L.G.C. No.155 of 1999 under Order VI Rule 17 of the Code of Civil Procedure (for short "the CPC") seeking leave of the Court to amend the application suitably, so as to add one para in the body portion of the application and an additional prayer in the relief portion for delivery of possession of 1200 square yards. That application was resisted by the writ petitioners by filing an elaborate counter.

Under the impugned order, as aforesaid, that was allowed.

Mr. Mahmood Ali, learned counsel appearing for the writ petitioners represents that such an application could not have been allowed by the Special Court, having regard to the jurisdictional issue involved. It is his further representation that

the stand taken by the applicant *inter alia* in the application in L.G.C. No.155 of 1999 is quite inconsistent with the stand taken by him *inter alia* in the affidavit filed in support of I.A. No.908 of 2004 and therefore, on such inconsistent stand taken by him, the relief of amendment cannot be granted to the petitioner.

Mr. Kannabhiran, learned senior counsel appearing for the 1st respondent represents that inartistic articulations of the counsel cannot be cashed in and the controversy shall be viewed in a broader perspective, so as to meet the ends of justice.

Leaving competing claims apart, the fact remains that the L.G.C. which was filed earlier seeking the relief of declaration that the applicant was the absolute owner and possessor and directing the respondents not to interfere with his peaceful possession and enjoyment of the application schedule mentioned property, is now being sought to be converted by means of proposed amendment to one for delivery of possession of 1200 square yards grabbed by the respondents. Obviously by the date of filing of the application by the 1st respondent herein, the law in vogue was that the Special Court was competent to try the applications wherein an attempt to grabbing land was alleged. There has been a change in the law in view of the judgment of the larger bench of this Court in ***HINDUSTAN AERONAUTICS EMPLOYEES CO-OPERATIVE HOUSING SOCIETY LIMITED, HYDERABAD v. SPECIAL COURT (CONSTITUTED UNDER A.P. LAND GRABBING (PROHIBITION) ACT, 1982), HYDERABA AND***

OTHERS[1] and the judgment of the Apex Court in ***N. SRINIVASA RAO v. SPECIAL COURT UNDER A.P. LAND GRABBING (PROHIBITION) ACT, AND OTHERS***[2]***.*** Presumably in that view, the 1st respondent seeks leave of the Court to amend the application suitably, so as to add the relief of recovery of possession. Whether such an amendment can be granted or not is the crucial question. Whether the approach of the parties while seeking such an amendment, is consistent with the earlier stand taken by them, or it is quite inconsistent, in our considered view, cannot have the effect on the merits while considering the request to amend an application suitably.

It is expedient for brevity to extract the proposed amendment thus:

> "(1) After paragraph (20) of the application adding:
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> The applicant submits that the respondents were intermittently entering into possession of 1200 sq.yards land of applicant without lawful entitlement with a view to illegally taking possession of the same. The applicant further submits that while this application is pending, respondents from December, 2002 onwards started making gradual progressive encroachment of the land and as a first step they constructed walls around Ac.6-24 gts. land of Sy.Nos.129/48 of which the applicants land forms part and during last month of 2003 they have enclosed application schedule property by erecting compound wall around 2200 sq.yards land and in early months of 2004 without any

> lawful entitlement, respondents with a view to illegally taking possession of the land of 1200 sq.yards of applicant entered into possession and encroached upon the land (property) of the applicant.
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> (ii) In the prayer portion of the application after the relief (a); adding
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> aa) directing the respondents to redeliver possession of the 1200 sq.yards grabbed land/property shown above to the applicant."

A perusal of the excerpted passage shows that the stand taken by the applicant seems to be that the respondents intermittently entered into the possession of the 1200 square yards of land without lawful entitlement and during the pendency of the application, the respondents, from December, 2002 onwards, started making gradual progressive encroachment of the land and as a first step, they constructed walls and during last month of 2003,

they enclosed the application schedule property by erecting the compound wall and illegally took possession of 1200 square yards of application land. In that view of the matter that they sought for relief of possession of 1200 square yards, said to have been grabbed by the respondents. Whether such an amendment can be allowed or not is the mute question. The stand taken by the respondents in the L.G.C. seems to be that they have been in possession of the land in dispute. That was the stand taken by them from the beginning and against granting of permanent injunction. In view of change in the law with regard to the

competence of the Special Court, having regard to the fact that the respondents are now in possession admittedly regardless of the fact that they have been in possession from the beginning or they came to be in possession by gradually encroaching the land in dispute after filing of a land grabbing case, the relief sought for by the 1st respondent in the land grabbing case cannot be granted by the Special Court for want of necessary jurisdiction.

The applicant in the land grabbing case therefore shall have to file another application alleging grabbing of the land and seeking the relief of possession. Instead of driving the parties to resort to multiplicity of proceedings, is it not necessary to permit the parties to suitably amend the pleadings to avoid such multiplicity of proceedings and in the interest of justice. The point that the case, which obviously not within the competence of the Special Court, now sought to be converted into one within the competence of the Special Court and that such an amendment cannot be allowed, is not the contention raised before us. The argument of the learned counsel for the writ petitioners seems to be that the stand taken by the applicant in the L.G.C., originally in the application and in the affidavit filed in support of the amendment petition, is quite inconsistent and on that premise the amendment cannot be considered. The eventual result of such an amendment is allowing the party to seek the relief of possession. We are of the considered view, having regard to the facts and circumstances of the instant case, that the ends of justice would be met if such an amendment is allowed and to prevent the multiplicity of proceedings.

Mr. Mahmood Ali, represents that the amendment cannot be allowed as the application having been filed after the commencement of enquiry before the Special Court in view of amended provisions of Order VI Rule 17 of the CPC which is as under:

> "**[17. Amendment of pleadings.**-The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:
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> Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

It is obvious from a perusal of the said provision that no application for amendment shall be allowed after the trial has commenced, unless the Court is of the clear view that despite due diligence, the party could not have raised the matter before commencement of the trial. Proviso appended to
Rule 17, in our considered view, will not operate as an absolute bar for granting leave to amend pleadings. When once the trial has been commenced, still it is left to the Court to consider that the parties are diligent enough or not. The facts in the instant case speaks for themselves the original L.G.C. was filed on 12-09-

1999, the trial/enquiry was commenced on
29-12-2003. The proposed amendment shows that it was subsequent to filing of an application the party intermittently grabbed the land and completed the same by the year 2002.
At this juncture, one shall not be oblivious of the fact that the main amendment was sought, in view of change in the legal position, which was far subsequent to commencement of the trial. But for the larger bench judgment of this Court and the judgment of the Apex Court in ***Srinivas Rao's*** case (two supra) the parties would not have sought the leave of the Court and the case would have been decided on its own merits. Inasmuch as, the question of jurisdiction is involved, it has become invariably necessary that parties to amend the pleadings suitably. In that view of the matter, the proviso appended under Rule 17 of Order VI of CPC will not come in the way of the parties in seeking to amend the pleadings suitably. Therefore, the contention that such an amendment cannot be allowed in view of amended provisions of Rule 17 merits no consideration, in view of the facts and circumstances of the case.

For the above reasons, we see no illegality or error of jurisdiction that has been committed by the learned Special Court in having granted leave to amend the pleadings.
The Writ Petition therefore fails and is dismissed. No order as to costs.

However, it may be mentioned that we have not expressed any view on the merits of the case. The learned Special Court

may proceed to dispose of the case on its own merits without being swayed by any of the observations made *inter alia* in the order.

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T. CH. SURYA RAO, J

Date: 22-11-2006

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G. CHANDRAIAH, J

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[1] 2004 (6) ALT 772 (L.B.)

[2] 2006(1) Decisions Today (SC)460